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8 Attorneys for Defendant,
9 DATAWAY, INC.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 AT&T Corp.

14 PLAINTIFF,

15 v.

16 Dataway, Inc.

17 DEFENDANT.

CASE NO. C07-02440 EDL

**DECLARATION OF ANNE-LEITH
MATLOCK IN SUPPORT OF
DEFENDANT'S MOTION TO CHANGE
TIME OF HEARING OF
DEFENDANT'S MOTION TO STRIKE
REPLY OF COUNTERDEFENDANT
AT&T TO COUNTERCLAIM OF
COUNTERCLAIMANT DATAWAY
INC.**

18
19 Dataway, Inc.

20 COUNTERCLAIMANT

21 v.

22 AT&T Corp.

23 COUNTERDEFENDANT
24
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**Date: August 5, 2008
Time: 9:00 a.m.
Courtroom: E**

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1 I, ANNE-LEITH MATLOCK, declare:

2 1. I am an attorney at law licensed to practice before all Courts of the State
3 of California and before the Courts of the Eastern and Northern District of California. I
4 am a partner of the law firm Matlock Law Group, P.C., attorneys of record for Defendant
5 and Counter-Claimant Dataway, Inc. (hereinafter "Dataway" or "Defendant").

6 2. On October 17, 2007 Dataway filed and served its Answer and
7 Counterclaims to AT&T's Complaint for Damages with supporting documents.

8 3. AT&T did not respond to this pleading till July 16, 2008, 170 days after the
9 actual due date of this pleading. See Dataway's Motion to Strike p.2-4, Docket No. 116.

10 4. On July 1, 2008 AT&T filed a Motion for Summary Judgment which
11 Dataway opposed on July 16, 2008, the day before AT&T filed its answer/reply. In the
12 Opposition to AT&T's Motion for Summary Judgment, Dataway demonstrated that
13 AT&T's failure to respond resulted in an admission of the averment pursuant to Fed. R.
14 Civ. P. 8(b)(6).

15 5. Filing of the untimely AT&T reply/answer (Docket No. 115) cannot be
16 sustained by a proper legal basis and is not warranted by existing law. AT&T's late
17 answer/reply is unreasonable and scandalous, has only served to cause unnecessary delay
18 in this case, and, as argued in Dataway's Motion to Strike, this Court should strike
19 AT&T's reply/answer in its entirety.

20 6. An order striking AT&T's reply is necessary before the Court decides on the
21 question if summary judgment should be entered and in whose favor. It is crucial for the
22 determination

23 7. of undisputed facts and consequently the merit of the causes of action
24 claimed by the parties.

25 8. To avoid additional delay in the prosecution of this matter, I attempted to
26 obtain a stipulation to request a change of time regarding the hearing date of Dataway's
27 Motion to Strike. I had prepared a stipulation and accompanying documents pursuant to
28 Civil Local Rule 6-2(a) and wanted to discussed this issue with Mr. Aires, Esq., in a Meet

1 and Confer on July 24, 2008 at around 4 p.m.. Timothy Aires, Esq., denied my request
2 and the conference remained unsuccessful.

3 8. Therefore, I respectfully request that this Court grants Dataway's Motion to
4 Change Time of the hearing of Dataway's Motion to Strike so that a decision on the
5 motion to strike can be taken as soon as possible.

6
7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is true and correct. I could and would competently testify thereto, if called
9 upon as a witness.

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11 This Declaration is executed this twenty-fourth day of July, 2008, at Walnut
12 Creek, California.

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15 Anne-Leith Matlock, Esq.
16 Matlock Law Group, P.C.
17 Attorney for Dataway, Inc.
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